

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**EAGLES LANDING DAYCARE &
LEARNING CENTER,**

Plaintiff,

v.

SPARTA INSURANCE COMPANY,

Defendant.

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CIVIL ACTION FILE

NO. 1:14-CV-00465-HLM

MOTION TO ENFORCE APPRAISAL AWARD

COMES NOW SPARTA INSURANCE COMPANY and files this, its Motion to Enforce Appraisal Award, and shows this Honorable Court as Follows:

STATEMENT OF FACTS

Plaintiff held a policy of insurance with Sparta Insurance Company (hereinafter “Sparta”), policy number 016CP01044. During the term of the insurance policy, Plaintiff suffered a property loss as a result of hail and storm damage. (See Complaint). Plaintiff instituted a claim with Sparta for the property loss. (See Complaint).

During the pendency of the claim, a dispute over the value of the claim arose, and Plaintiff filed this action alleging Breach of Contract and Bad Faith for

failure to pay the claim. On April 1, 2014, Sparta issued payment to Plaintiff insured representing the uncontested portions of the loss. However, Plaintiff claimed, and Sparta contested, that the hailstorm caused interior damage and that replacement of supports on the exterior structure were needed.

The policy at issue contains an appraisal provision. Following a Motion to Compel Appraisal, this Court ordered, on July 21, 2014, that this matter go through the appraisal process. As a result of the retained appraisers inability to agree upon an umpire the parties filed a joint motion to appoint one. On September 19, 2014 this Court granted same and appointed James M. Brown to serve as an umpire in this matter.

On January 9, 2015, Mr. Brown issued a letter to this Court and provided the following ruling:

I did not observe any interior or exterior damages caused by the hailstorm and no evidence of such damage was presented in the documents provided. In addition, no evidence was observed or presented in the documents that indicate the hailstorm affected the water shedding capability of the metal roof panels resulting in water leakage into the interior. The hailstorm also did not reduce the service life of the metal roof panels.

Pursuant to Mr. Brown's ruling, Sparta has requested that Plaintiff dismiss this matter, but such requests have been ignored. Accordingly, Sparta respectfully requests that this Court enforce the appraisal award and dismiss this action.

ARGUMENT AND CITATIONS OF AUTHORITY

Georgia law concerning the enforceability of appraisal awards is well settled. An appraisal award is “the result of a contractual method of ascertaining the amount of loss, and it is binding on the parties as to the amount of loss unless the award is set aside.” *Southern General Ins. Co. v. Kent, et al.*, 187 Ga. App. 496 (1988) (citing *Jordan v. General Ins. Co. of America*, 92 Ga. App. 77 (1955)). “There exists a presumption in favor of the regularity and fairness of appraisement awards, and it is difficult to set them aside.” *Southern General*, 187 Ga. App. at 497 (citing *Pacific Nat’l Fire Ins. Co. v. Beavers*, 87 Ga. App. 294 (1952)).

In order to challenge an appraisal award, there must be “evidence of fraud, oppression, irregularity, or unfairness, other than on the disputed issue of value, and no other circumstances tending to raise the issue” *Bell v. Liberty Mut. Fire Ins. Co.*, 319 Ga. App. 302 (2012). (citing *Southern General*, 187 Ga. App. at 497). “Thus, unless there is fraud sufficient to set the appraisement award aside, the trial court should have directed a verdict . . . on the issue of amount of loss.” *Southern General*, 187 Ga. App. at 497. Even if there is evidence of fraud, oppression, irregularity or unfairness, such cannot relate to “the disputed issue of value.” *Id.* Plainly stated, Plaintiff has not, and cannot, move to set aside the umpire’s award because there is absolutely no evidence to support “fraud,

oppression, irregularity, or unfairness” in the umpire’s award. Therefore, Sparta respectfully requests that this Court order enforcement of the appraisal award and dismiss this action.

CONCLUSION

For the foregoing reasons, Sparta respectfully requests that this Court Order enforcement of the appraisal award and dismiss this action.

This 5th day of March 2015.

Respectfully submitted,

SWIFT, CURRIE, McGHEE & HIERS, LLP

By: /s/ Pamela N. Lee
Pamela Newsom Lee
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SPARTA INSURANCE COMPANY

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CERTIFICATE OF FONT & CERTIFICATE OF SERVICE

I hereby certify that the foregoing documents were prepared in Times New Roman 14-point font in conformance with Local Rule 5.1(C), and that I have this day electronically filed this ***Motion to Enforce Appraisal Award*** with the Clerk of Court using the CM/ECF system and served upon all counsel of record, by electronic filing and/or United States mail, postage prepaid, and properly addressed as follows:

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This 5th day of March 2015.

SWIFT, CURRIE, MCGHEE & HIERS, LLP

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